

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:PSI:B01

PLR-153094-12

Date:

June 06, 2013

LEGEND

Trust =

Trustees =

A =

B =

C =

D1 =

D2 =

State =

n =

Court =

Dear :

This letter responds to a letter dated December 11, 2012, and subsequent correspondence, submitted on behalf of Trust, requesting a ruling that the reformation of

Trust, as described below, will not cause Trust to fail to meet the requirements of § 664(d)(2) of the Internal Revenue Code.

FACTS

The information submitted states that A created Trust on D1 under the laws of State. A created Trust with the intention that Trust qualify as a charitable remainder unitrust (CRUT) under § 664(d)(2). A represents that A's intention upon establishing Trust was for Trust to terminate upon the death of A. The original Trust agreement provides, however, that the term of Trust and the annuity payment will extend until the first to occur of the death of the survivor of A and B, and the nth anniversary of the date of Trust.

A represents that several months after signing the Trust agreement, but within the same taxable year of the donation, A discovered that Trust did not accurately express A's intent as to the term and the annuity payment of the Trust.

Because of the error, and because Trust is irrevocable, A, B, and Trustees sought an order from Court authorizing a reformation of Trust. No parties objected to the proposed reformation. On D2, Court issued an order approving the reformation of Trust to reflect A's intention as described above. The reformed Trust agreement provides that Trust extends until the date of death of A. The order states that Court finds that, because the accomplishment of A's intent regarding the term and annuity payments of the Trust was affected by a mistake of fact and inducement, Trust failed to accurately implement A's intent. The order is contingent on receipt of a favorable private letter ruling from the Internal Revenue Service. State law permits the reformation of a trust to conform to the settlor's intent.

A, B, Trustees, and C, the charitable remainder beneficiary, all consent to the reformation of Trust.

LAW AND ANALYSIS

Section 664(d)(2) provides that for purposes of § 664, a charitable remainder unitrust is a trust (A) for which a fixed percentage (which is not less than 5 percent) of the net fair market value of its assets, valued annually, is to be paid not less often than annually, to one or more persons (at least one of which is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals, (B) from which no amount other than the payments described in § 664(d)(2)(A) may be paid to or for the use of any person other than an organization described in § 170(c), (C) following termination of the payments described in § 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c) or is to be retained by the trust for such a use, and (D) with respect to each contribution of property to the trust, the value (determined under § 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 1.664-3(a)(3)(ii) of the Income Tax Regulations provides that a trust is not a charitable remainder unitrust if any person has the power to alter the amount to be paid to any named person other than an organization described in § 170(c) if such power would cause any person to be treated as the owner of the trust, or any portion thereof, if Subpart E, Part 1, Subchapter J, Chapter 1, Subtitle A of the Code were applicable to such trust.

Section 1.664-3(a)(4) provides that a charitable remainder unitrust may not be subject to a power to invade, alter, amend, or revoke for the beneficial use of a person other than an organization described in § 170(c).

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that the judicial reformation of Trust does not violate § 664. Accordingly, we conclude that the judicial reformation of Trust does not adversely affect Trust's qualification as a charitable remainder unitrust under § 664(d)(2).

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether Trust is or was a charitable remainder unitrust within the meaning of § 664(d)(2).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Trust's authorized representatives.

Sincerely,

Faith P. Colson

Faith P. Colson
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: